

**Before the State of South Carolina
Department of Insurance**

In the matter of:

Robert D. Heatherley, dba Phoenix Special
Risk, Inc.
3473 Lawrenceville- Suwanee Rd., Suite D
Suwanee, Georgia 30024

File Number 2004-122448

**Consent Order
Imposing Administrative Penalty**

This matter comes before me pursuant to an agreement entered into between the State of South Carolina Department of Insurance and Robert D. Heatherley, dba, Phoenix Special Risk, Inc., a licensed South Carolina non- resident insurance broker.

Upon review of this matter, I hereby find as fact, that Mr. Heatherley, while licensed to do business as a non-resident insurance broker within the State of South Carolina, within a period including the months of March and June of 2004, did fail to remit unearned premiums to Prime Rate Premium Financing Company, for an approximate amount of \$13,591.68 dollars, and to timely issue the policies in question. Mr. Heatherley acknowledges these allegations and contends this failure resulted from inadvertence and oversight and not from any intent to avoid the requirements of the Law. Nevertheless, these actions can ultimately lead to the revocation of his license to transact the business of insurance as a non-resident broker in South Carolina following a public hearing at the Administrative Law Court, pursuant to S.C. Code Ann. & 38-43-130.

Prior to the initiation of any administrative proceedings by the Department against him, Robert D. Heatherley and the Department agreed to submit the entire matter to me, along with their specific recommendation, for my summary decision, rather than to proceed toward a formal public hearing. The consensual recommendation was that, in lieu of the Department seeking to revoke Mr. Heatherley's non-resident insurance broker's license, he would waive his right to a public hearing and immediately pay an administrative penalty in the amount of \$1,500.00 dollars.

After a thorough review of the record, and pursuant to my findings of fact, I hereby conclude as a matter of law, that Robert D. Heatherley, of Phoenix Special Risk, Inc., had violated S.C. Codes Ann. § 38-43-130(C)(4) & § 38-43-50 (Supp. 2003). As a result, I can now take administrative disciplinary action against his insurance broker's license and that of his agency. However, in view of the fact that Mr. Heatherley has fully reimbursed the monies in question, and granting the broker the benefit of the doubt, I conclude that there was no malice, criminal intent, nor willful conduct involved. Therefore, under the discretionary authority provided to me by the General Assembly within S.C. Code Ann. § 38-2-10 (2)(Supp. 2003), and after carefully considering the recommendation of the parties, I hereby impose against Mr. Robert Heatherley an administrative penalty in the amount of \$1,500.00. That fine must be paid within ten days of receipt of this consent order. If he does not timely pay that total fine amount,

his non-resident insurance broker's license will be immediately revoked without any further disciplinary proceedings.

This administrative penalty has been reached by the parties as a result of negotiation and compromise, and it is made in consideration of Robert Heatherley's assurance that in the future he will fully comply with South Carolina's Insurance Laws.

This penalty includes all expenses related to the investigation of this matter, as provided in Section 38-13-70 of the South Carolina Code of Administrative Laws. The parties expressly agree and understand payment of the agreed-upon penalty constitutes full accord and satisfaction of this matter.

By his signature upon this consent order, Robert D. Heatherley acknowledges this administrative disciplinary order is a public record subject to the disclosure requirements of the State of South Carolina's *Freedom of Information Act*, S.C. Code Ann. §§ 30-4-10, *et seq.* (1991 and Supp. 2003).

It is, therefore, ordered that Robert D. Heatherley/ Phoenix Special Risk, Inc. shall, within ten days of the date of receipt of this consent order, pay through the Department of Insurance an administrative fine in the total amount of \$1,500.00 dollars.

It is further ordered that a copy of this consent order be immediately transmitted to the National Association of Insurance Commissioners for distribution to its member states and a copy be placed in Mr. Robert D. Heatherley's licensing file.

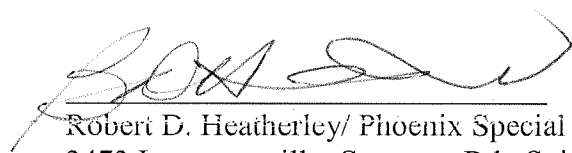
This order becomes effective as of the date of my signature below.


Gwendolyn Fuller McGriff
Deputy Director

Dec 1, 2004

At Columbia, South Carolina

I CONSENT:



Robert D. Heatherley/ Phoenix Special Risk, inc.
3473 Lawrenceville- Suwanee Rd., Suite D
Suwanee, Georgia 30024.

Dated this 12th day of November, 2004.

RECEIVED

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STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE